UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,221	04/29/2005	Heinz Focke	Q87775	7071

23373 7590 05/02/2007

SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER	
NGUYEN, PHU HOANG	
ART UNIT	**PAPER NUMBER**
1731	

MAIL DATE	DELIVERY MODE
05/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/533,221	FOCKE ET AL.	
	Examiner	Art Unit	
	Phu H. Nguyen	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *4/29/2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *4/29/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 4/29/2005 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the English translation of the document from country code DE has not been provided and a copy of GB-378143 cited in the instant IDS also has not been provided. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the latter" in describing where the tobacco is being treated. There is insufficient antecedent basis for these limitations in the claim.

For purpose of examination, the examiner will assume the phrase "Device for the dressing of fibrous material for further processing, in particular distributor – which is known as a hopper- for the dressing of cut tobacco in the production of cigarettes, the tobacco being introduced into the distributor and being treated within the latter by loosening up" means "Device for the dressing of fibrous material for further processing, in a distributor for the dressing of cut tobacco in the production of cigarettes, the tobacco being introduced into the distributor and being treated within the distributor by loosening up".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Claims 1, 3 and 8 are rejected under 35 U.S.C. 102(a)/ 35 U.S.C 102(e) as being anticipated by Barkmann et al. (U.S Pub. No. 2003/0034040).

Regarding claims 1 and 8, Barkmann discloses a device for dressing of fibrous material for further processing, in a distributor (D, fig.1) wherein a metering devic e is located upstream of guides (33,34, fig.1) and downstream of the sifter (12, fig.1) (as seen in the direction of advancement of the satisfactory constituents, primarily or even exclusively tobacco shreds) from gate (1, fig. 1).

Regarding claim 3, Barkmann discloses the sifter preferably includes an at least substantially zig-zag-shaped sifter having a plurality of stages including a lowermost stage (page 2, line 2-4 of paragraph 19).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 4-7, 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barkmann et al. (U.S Pub. No. 2003/0034040).

Regarding claim 2, Barkmann does not disclose the sifter is a separate member outside the distributor. However, due to lack of criticality or unexpected results, it would be obvious to one of ordinary skill in the art to design the distributor with the sifter as a separate member outside the distributor for purposes such as ease to clean or perform maintenance or space saving.

Regarding claims 4 and 6, Barkmann does not disclose the sifter is designed as a cone-type sifter. However, cone-type sifter and zigzag sifter are alternative of each other as suggested by claim 3 of the instant application. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to alternatively choose a cone-type sifter instead of a zigzag sifter.

Regarding claim 5, Barkmann discloses the tobacco can be supplied to the sifter via a supply line (9, fig. 1) in the sifter (12, fig. 1), the treated tobacco being capable of being introduced from the sifter directly into the distributor by mean of a duct (27, fig.1) (page 5, paragraph 54). However, Barkmann does not disclose the supply line is being located vertically and centrally in the sifter and the connecting line is oriented horizontally. Due to lack of unexpected results it would be obvious to one of ordinary skill in the art to design these connecting lines in orientations that most fit the rest of the component for purposes such as ease to clean or perform maintenance or space saving.

Regarding claim 7, Barkmann also discloses tobacco enters into and moves in the distributor is treated and advanced by air in conjunction with implements and/or groups of implements as a rule (page 1, paragraph 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use flowing air to advance tobacco within the device.

Regarding claim 9, Barkmann discloses the arrangement of rotary rakes (3 fig.3) and feeding roller (7, fig.3) and rotary paddle wheel (8, fig. 3) (respectively corresponding to the claimed "three spiked rollers (35, 36, 37), of which two spiked

rollers (36, 37) are arranged axially parallel next to one another and are in mutual engagement, whilst the third spiked roller (35) is mounted above the two spiked rollers (36, 37) and so as to be offset to the tobacco stream).

Regarding claim 10, Barkmann discloses a modified distributor (D1, fig. 4) where tobacco being capable of being supplied to the sifter by means of a tobacco conveyor (107, fig. 1). Therefore, it would have been obvious to modify the distributor to reduce the space of the distributor making it more compact (page 6, paragraph 66).

Regarding claims 11 and 12, Barkmann also discloses an air duct containing an air source (13, fig. 1) wherein the air duct and the sifting duct from a closed flow circulation system (fig. 1).

Regarding claim 13, Barkmann also discloses the tobacco conveyed upwards by the air in the sifting duct can be deflected, in particular in a deflecting duct (64, fig. 1) which follows the sifting duct and which supplies the tobacco stream to the metering system in a downwardly directed movement.

Regarding claim 14, Barkmann discloses a Coanda separator working with tubular body (66, fig. 1) where air is separated from tobacco under the influence of centrifugal force and by the Coanda effect (page 5, paragraph 51). This is be equivalent to the use of air permeable drum recites in the instant claim 14 which air can be sucked in by the fan in the air duct since both accomplish the object of separating the air from the tobacco.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barkmann et al. (U.S Pub. No. 2003/0034040) as applied to claim 1 above further in

view of Heitmann (U.S Patent No. 5267576). Barkmann does not discloses the device with a part-stream can be diverted by means of blast air which arranged in a transport well of tobacco and which guides part of the tobacco into a branch duct. Heitmann discloses one more nozzles (11, fig. 1) that discharges jets of air that capable of entraining the shreds (12, fig. 1) but not the ribs (13, fig. 1) and not the normally relatively heavy foreign objects (15, fig. 1) (column 7, line 22-29). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add air nozzle to enhance the efficiency of the sifter as taught by Heitmann.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 3 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6782890. Although the

conflicting claims are not identical, they are not patentably distinct from each other because they are both point to an apparatus for feeding cut tobacco through a zig-zag sifter to a metering system to form tobacco strand.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Brand et al. (U.S Patent No. 5645086) discloses the improved a stationary air withdrawing device (apparatus 36) and its equivalents exhibit the important advantage that the surplus air can be readily, reliably and predictably segregated from tobacco particles and tobacco dust and that such desirable segregation can take place in the distributor chamber (26) so that the segregated solid material can enter or reenter the flow (27) for introduction into the channel (49), i.e., into the tobacco stream (34). Moreover, the thus cleaned surplus air can be readily admitted into the surrounding atmosphere or reused for controlled advancement of tobacco particles from the deflecting zone (12) into the chamber (26) and thence into the channel (49). Still further, such desirable highly satisfactory segregation of solid particles from surplus air in the chamber 26 can be achieved without resorting to complex, expensive and readily clogged special filters which must be cleaned or replaced at frequent intervals (column 6, line 50-65).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phu H. Nguyen whose telephone number is 571-272-25931. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

P.N 4/21/2007